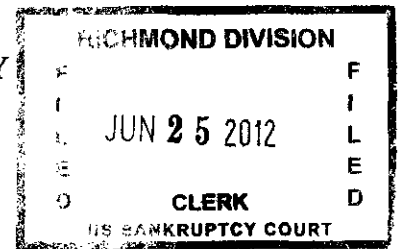


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., et al.,	:	Case No. 08-35653-KRH
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**STATEMENT OF MITIGATION AND
DISPUTE OF PROPOSED REJECTION OF CLAIM**

Comes now KC Benjamin Realty LLC and for its Statement of Mitigation And Dispute of Rejection of Claim, respectfully states as follows:

1. KC Benjamin Realty LLC ("KC") or its predecessor in interest, entered into a lease, on June 24, 1994, with Circuit City Stores, Inc. ("Debtor"), for certain retail property in Kansas City, Missouri.

2. The subject lease expires on January 31, 2015.

3. KC filed its Proof of Claim, Claim No. 7891, in the sum of \$337,797.68, which is the accurate amount that would be due under the lease from Debtor to KC during the period that is properly recoverable under the U.S. Bankruptcy Code. KC attached a copy of the lease and other supporting documentation to its claim establishing the validity and amount of Claim No. 7891.

4. A proof of claim "constitutes *prima facie* evidence of the validity and amount of the claim". FED R. BANKR. P. 3001(f); *see In re Fitzgerald*, 2008 Bankr. LEXIS 3579, *4 (Bankr. W.D. Va. 2008) ("a proof of claim is presumed to be *prima facie* valid"). The burden of proof therefore "shifts to the objector to come forth with evidence sufficient to rebut the *prima facie* case." *See United States v. Johnson (In re Johnson)*, 2000 U.S. Dist. LEXIS 5649 *17 (N.D. Ga. March 30, 2000) (citing *Placid Oil*), 988 F. 2d 554, 557 (5th Cir. 1993)).

5. "If the proof of claim is supported by the required documentation, the presumption of validity may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal." *In re Falwell*, 434 B.R. 779, 784 (Bankr. W.D. Va. 2009). In order to prevail,

the Liquidating Trust must present evidence “sufficient to demonstrate the existence of a true dispute and must have probative force equal to the contents of the claim.” *In re Falwell*, 434 B.R. at 784 (citing 9 COLIER ON BANKRUPTCY, “Proof of Claim,” ¶ 3001.09[2] (15th ed. Rev.)). The Liquidating Trust, however, has offered no evidence supporting the reduction of the Claims that overcomes the presumption of the Claims’ validity.

6. Debtor ceased business operations in the subject property and thereafter KC posted “For Lease” signs on the property. A photograph of one of said signs is attached hereto, marked Exhibit A and incorporated herein by reference.

7. KC also shows that the subject property is available for lease on its web site, which can be found at www.sandordev.com. A copy of the information displayed regarding this property is attached hereto, marked Exhibit B and incorporated herein by reference.

8. KC also has full-time leasing representatives assigned to the subject property who make telephone calls and in-person presentations such as at International Council of Shopping Center state, regional, national and annual conferences to market and lease the subject property. KC has diligently and actively sought a replacement tenant. KC engaged LaSala-Sonnenberg Commercial Realty Company, a licensed real estate broker in the State of Missouri, to market, show and attempt to find a replacement tenant for the subject real estate.

9. The Liquidating Trustee may contact the following person to discuss KC’s mitigation efforts:

William T. Niemier
Sandor Development Company
10689 N. Pennsylvania Street, Suite 100
Indianapolis, IN 46280

10. The actions described herein by KC have been taken in efforts to mitigate the damages it incurred as a result of Debtor ceasing to conduct business at the subject property and are commercially reasonable actions on behalf of a landlord with vacant property.

11. An Affidavit of Elizabeth Bishop is attached hereto, marked Exhibit C and incorporated herein by reference. Said Affidavit further describes the actions taken by KC to mitigate its damages.

12. Despite all of KC’s marketing and mitigation efforts described herein, the subject property is currently vacant and has been vacant since the date Debtor ceased business operations

at this location and therefore, Debtor's objection to KC's claim should be denied and KC's claim against Debtor should be paid as a general unsecured claim in the full amount of \$337,797.68.

13. The Liquidating Trustee has submitted no evidence to support its position that KC has failed to mitigate its damages, has failed to meet its burden of presenting sufficient evidence that a legitimate dispute exists regarding Claim No. 7891, and its Objection to KC's claim should be overruled and denied.

WHEREFORE, KC Benjamin Realty LLC respectfully requests that the Court deny Debtor's objection to its claim, that KC's claim against Debtor be paid as a general unsecured claim in the full amount of \$337,797.68, and for all other relief just and proper in the premises.

Respectfully submitted,

KC Benjamin Realty LLC

By: 
William T. Niemier

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Mitigation And Dispute of Rejection of Claim has been served, on this 22nd day of June, 2012, by Federal Express next day delivery, costs prepaid, upon the following:

Jeffery N. Pomerantz
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Boulevard
Los Angeles, CA 90067-4100

Lynn L. Tavenner
TAVENNER & BERAN, PLC
20 N. Eighth Street, 2nd Floor
Richmond, VA 23219


William T. Niemier

William T. Niemier
KC Benjamin Realty LLC
10689 N. Pennsylvania Street, Suite 100
Indianapolis, IN 46280
(317) 925-9011

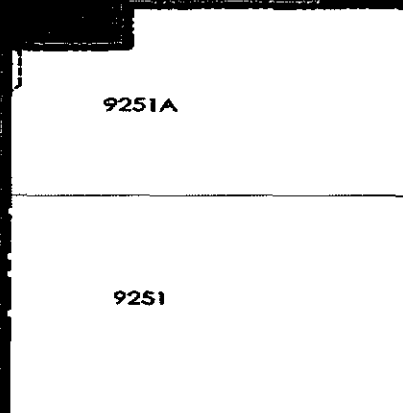
FOR LEASE
813-362-1000
CASALA-SONNENBERG
COMMERCIAL REALTY CO.
222 S. W. 10th St.

BENJAMIN PLAZA

KANSAS CITY

9251 Hillcrest Rd.
Kansas City, MO 64138

RETAIL SPACE
FOR LEASE
50,000 - 100,000 SF

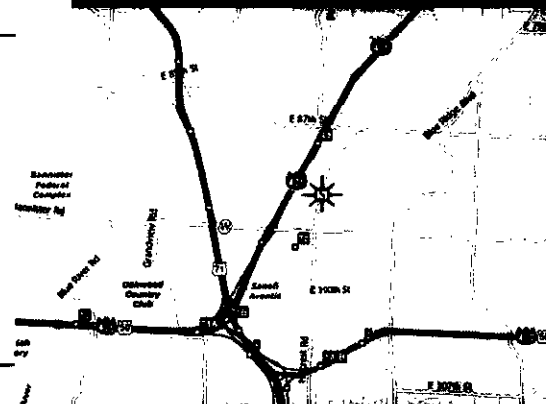


KEY FEATURES

- Great for redevelopment
- 100,000 SF building
- Two 50,000 SF spaces already split

DEMOGRAPHICS

	1 mile	3 mile	5 mile
Population	5,308	49,728	150,079
Households	2,243	19,860	64,248
Average Household Income	\$47,100	\$49,157	\$54,732
Median Household Income	\$46,480	\$44,890	\$46,950



Jay Stein

www.sandordc.com



Exhibit B

AFFIDAVIT OF ELIZABETH BISHOP

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

I, Elizabeth Bishop, being first duly sworn upon my oath and based upon my personal knowledge, state the following:

1. I am employed as the Marketing Manager at Sandor Development Company.
2. KC Benjamin Realty LLC ("KC") is an entity owned, managed, and marketed by Sandor Development Company.
3. KC is the owner of a shopping center in Kansas City, Missouri, a portion of which was leased to Circuit City Stores, Inc. ("Circuit City").
4. Circuit City ceased business operations at this property and thereafter KC posted "For Lease" signs on the property.
5. KC also shows that the subject property is available for lease on its web site, which can be found at www.sandordev.com.
6. KC also has full-time leasing representatives assigned to the subject property who make telephone calls and in-person presentations such as at International Council of Shopping Center state, regional, national and annual conferences to market and lease the subject property. KC has diligently and actively sought a replacement tenant for this property. KC engaged LaSala-Sonnenberg Commercial Realty Company, a licensed real estate broker in the State of Missouri, to market, show and attempt to find a replacement tenant for this property.
7. The above actions by KC have been taken to mitigate the damages it incurred as a result of Circuit City ceasing to conduct business at the subject property and are commercially reasonable actions on behalf of a landlord with vacant property.
8. Despite all of KC's marketing and mitigation efforts, the subject property is currently vacant and has been vacant since Circuit City ceased business operations at this location.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.


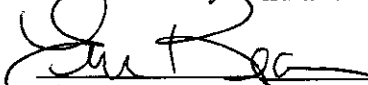

Elizabeth Bishop

Exhibit C

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Elizabeth Bishop, an employee of Sandor Development Company, who acknowledged the execution of the foregoing Affidavit as her free and voluntary act.

WITNESS my hand and Notarial Seal, this 22nd day of June, 2012.



Signature, Notary Public



Printed, Notary Public

My Commission Expires: 2/9/2019

County of Residence: MARION





June 22, 2012

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street, Room 4000
Richmond, VA 23219

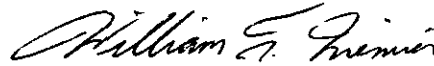
RE: Circuit City Stores, Inc. Bankruptcy
Case No. 08-35653-KRH

Dear Clerk:

Enclosed please find the original and several copies of a Statement of Mitigation And Dispute of Rejection of Claim for filing in the above case. Please return filed marked copies in the provided envelope.

Thank you for your assistance and please contact me at (317) 925-9011 if you have any questions or need additional information.

Very truly,


William T. Niemier
KE Benjamin Realty LLC

Enclosures:

cc: Jeffery N. Pomerantz, PACHULSKI STANG ZIEHL & JONES LLP
Lynn L. Tavenner, TAVENNER & BERAN, PLC

10689 N. Pennsylvania St., Suite 100, Indianapolis, IN 46280

p. 317.925.9011 f. 317.927.0723

toll free: 877.925.9011

www.sandordev.com